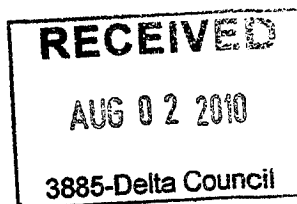


July 28, 2010

Phil Isenberg, Chairman  
Delta Stewardship Council  
650 Capitol Mall, 5<sup>th</sup> floor  
Sacramento, CA 95814



**Subject: Comments from East Bay Municipal Utility District on the Second  
Draft Interim Plan**

Dear Mr. Isenberg:

The East Bay Municipal Utility District (EBMUD) appreciates the opportunity to provide input on the Second Draft Interim Plan under development by the Delta Stewardship Council. In response to the Council's invitation, EBMUD is presenting its recommended priority actions for the Interim Plan. This is followed by our comments organized under the eight policy objectives of the Delta Reform Act, as you requested in your July 19, 2010 letter. We conclude with a brief account of EBMUD's programs and activities that are directly related to, and support, the goals of the Delta Plan.

I. EBMUD's Recommended Priorities for the Interim Delta Plan

Below are listed EBMUD's four broad policy concerns that we ask the Council to address as it finalizes the Interim Delta Plan. We deem these issues of special importance for resolution to assure the success of both the Interim and final Delta Plans.

- 1. The Council, supported by the Independent Science Board, should carefully evaluate the impacts and mitigation associated with the proposed construction and operation of the dual conveyance system being considered by the Bay Delta Conservation Plan (BCDP) to ensure that the impacts are fully mitigated by the project proponents.** So far, the BDCP process has not articulated which ecosystem actions in BDCP constitute mitigation for the impacts of construction and operation of the dual conveyance. Accurate and complete information about the necessary mitigations is critical to understand how the beneficiary pays principle should be applied. The independent evaluation of mitigation measures is an appropriate action for the Council to undertake in its consideration of the BDCP.
- 2. A long term strategy for levee investment is critical, and must be based on a comprehensive risk assessment.** There is nearly universal agreement that the Delta levees require substantial additional investment to maintain public safety and protect essential infrastructure, and halting ongoing programs would only increase the risk of levee failure in the near term. The Council should maintain current state levee

programs, including both Special Projects and Subventions, and at the same time initiate an evaluation of the effectiveness of those programs.

3. **The Council should immediately commence work on identifying beneficiaries in the Delta watershed, and analyzing the differential benefits that will accrue to those beneficiaries from the Delta Plan.** Fundamental questions about how to adequately fund the development and implementation the Delta Plan remain unanswered, but the Council should begin now to develop a detailed proposal for a funding mechanism that truly reflects the beneficiary pays principle. EBMUD urges the Council to recognize that not all entities within the Delta watershed will receive comparable benefits under the Delta Plan. For example, only a subset of water users will enjoy 50-year operating permits if the BDCP is adopted into the Delta Plan, and this substantial benefit should be reflected in any broad fee schedule.
4. **The Two Gates Fish Protection Demonstration Project, which involves installation of gates in two Delta channels (Old River, Connection Slough), is intended to keep Delta smelt away from south Delta pumping; however, it may affect salmonids that migrate through the Delta, including salmon and steelhead that migrate to and from the Mokelumne River.** EBMUD requests that the Council recommend and assure full funding of a robust fishery monitoring component to verify whether the project's contemplated benefits are achieved in the field. This should be coupled with a commitment to utilizing those results in an adaptive management process that is clearly described before the project is approved and implemented.

## II. EBMUD Recommendations Under the Eight Policy Objectives

This section contains EBMUD's specific comments on each of the policy objectives identified in the Delta Reform Act, as requested by the Council.

### **1. Policy objective 85020 (a): Manage the Delta's water and environmental resources and the water resources of the state over the long term.**

Where Delta Water Flows are discussed (pg. 28) in the Analytical Tools section of the Second Draft Interim Plan, we suggest that the Council explicitly acknowledge that the ecosystem flow criteria presented in the SWRCB report entitled, "Development of Flow Criteria for the Sacramento San Joaquin Delta Ecosystem," did not balance other water uses with ecosystem needs, as would be required for a public trust analysis. More information should be included that describes the nature of SWRCB's preliminary analyses and potential next steps. In several places, the SWRCB report states that additional study is needed and all determined flow criteria must also be tempered by the need to protect health and safety. The appropriate balancing of water for ecosystem restoration and water for other uses will be fundamental to implementing a viable Delta Plan.

**2. Policy objective 85020 (b): Protect and enhance the unique cultural, recreational, and agricultural values of the Delta as an evolving place.**

EBMUD has no specific recommendations in this area to supplement the near term activities covered by the Delta Reform Act (SBx7 1) and addressed by the Interim Plan.

**3. Policy objective 85020 (c): Restore the Delta ecosystem, including its fish and wildlife, as the heart of a healthy estuary and wetland ecosystem.**

The Second Draft Interim Plan contains a section entitled "Framework for Early Actions" (pg. 15) covering a variety of near term projects identified in the Delta Reform Act, including the Two Gates Fish Protection Demonstration Project proposed for implementation by December 1, 2010. This project must include a substantial fishery monitoring component to verify whether its contemplated benefits are achieved in the field, and then commit to utilizing those results in an adaptive management process that is clearly described before the project is approved and implemented. The proposed gate locations are in channels used by salmonids that migrate to and from the Mokelumne River. EBMUD previously worked closely with the project proponents to address these concerns, and will continue to seek assurances that robust monitoring is included to avoid adverse impacts.

The Council and the Independent Science Board should also actively review and provide input on the ecosystem restoration elements proposed in the Bay Delta Conservation Plan during the Interim Plan period, including independent review of the science supporting the ecosystem actions, confirming who is responsible for implementation and funding of the proposed actions, and reviewing the sufficiency of adaptive management. The BDCP proponents are not proposing to pay for the ecosystem elements and the Council should be thinking in advance about how BDCP may be incorporated into the Delta Plan, including financial responsibility aspects.

**4. Policy objective 85020 (d): Promote statewide water conservation, water use efficiency, and sustainable water use.**

We commend the Council for taking an active role in assuring that the state continues to make progress toward increased water use efficiency (pg. 11) in all sectors. We suggest that the Council solicit regular updates or presentations on conservation and water use efficiency during the Interim Plan period to better understand advancements, challenges and outstanding issues, including progress reports on efforts to reduce per capita water use 20% by 2020 as called for by the November 2009 Delta legislative package.

**5. Policy objective 85020 (e): Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.**

EBMUD encourages the Council and the Independent Science Board (ISB) to engage in critical areas of scientific uncertainty regarding water quality impacts (pg. 29). Water quality is a prime example where stakeholders are not in agreement on the effects of point and non-point discharges on the Delta ecosystem, and where the Council and ISB may provide a useful forum for discussing what studies and activities to implement.

**6. Policy objective 85020 (f): Improve the water conveyance system and expand statewide water storage.**

The Council's Interim Plan and Delta Plan should include a principle stating that the proponents of new Delta conveyance should be responsible for an appropriate share of the flows (pg. 28) required for the Delta ecosystem. Policy objective 85020(f) is interrelated with policy objective 85020(a); one-half of the co-equal goals cannot be advanced without addressing the other half.

**7. Policy objective 85020 (g): Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection.**

As the Council begins to develop a strategic investment strategy for the long term Delta Plan, the Council should continue to support levee improvements that are ongoing through the Special Projects Program and Delta Levee Subvention Program administered by the Department of Water Resources (pg. 29). EBMUD's Mokelumne Aqueducts are protected by levees on five islands as they cross the Delta and the DWR Levee Program helps to improve those levees, which benefits landowners, EBMUD and other infrastructure owners on the landward side of the levees, and protects ecosystem habitat and water delivery channels on the waterside of the of the levees.

Emergency preparedness actions should be added to the Interim Plan. EBMUD has no recommendations to add to the extensive discussion that occurred in the form of presentations, comments and input received at the Council's July 8, 2010 Stakeholder Workshop and July 23, 2010 Council meeting on this topic.

**8. Policy objective (h): Establish a new governance structure with the authority, responsibility, accountability, scientific support and adequate and secure funding to achieve these objectives.**

The Second Draft Interim Plan recommends that the Council: (1) begin to develop accurate and complete information on current finances, and (2) initiate discussion of long term financing to support activities under the Delta Reform Act (pg. 38). EBMUD agrees that listing or cataloging current financial information would be helpful, and also suggests a careful analysis of the extent to which various interests in the Delta watershed benefit from the activities covered by the Delta Plan.

### III. EBMUD Activities and Programs that Support the Delta Plan

The Mokelumne River provides only 2% of the unimpaired inflow to the Delta out of all its tributaries, and yet it provides more than 90% of the water supply needs for EBMUD's 1.3 million customers. The information below is not directly related to the Interim Delta Plan, but is provided for background to illustrate EBMUD's vital relationship to the Delta watershed as an upstream water rights holder.

EBMUD has an established record of managing water resources on the Mokelumne River to meet the co-equal goals of supply reliability and a healthy ecosystem. EBMUD increased water releases to the lower Mokelumne River starting in the 1990s as a result of an interagency agreement with state and federal fishery agencies that balanced the needs of the lower Mokelumne River ecosystem and customer needs for water supply during times of shortage. By formal agreement with the fishery agencies and other major water users, these flow releases constitute EBMUD's fair share to support the Delta ecosystem, even though the Mokelumne River provides only 2% of the unimpaired inflow to the Delta. This type of balancing will be important to consider when the Council develops recommendations for Delta outflows and when the SWRCB takes up regulatory proceedings on Delta outflows.

In addition to enhanced flow releases, EBMUD undertakes other measures in the lower Mokelumne River in partnership with fishery agencies to improve conditions. This includes gravel augmentation to improve spawning habitat for salmonids and annual assessments to determine how the restoration program is working, which helps to inform restoration actions in subsequent years.

EBMUD is a pioneer in the water conservation field and is achieving savings of 23 million gallons per day (MGD) since its conservation tracking efforts were initiated in the mid-1990s. EBMUD has adopted an aggressive future goal of another 39 MGD by 2040 and is on track to meet the 20% reduction called for by the 2009 Delta legislation. EBMUD also is actively pursuing implementation of water recycling projects and will have 14 MGD of projects on line by 2020, with 20 MGD targeted by 2040.

Since 1990 EBMUD has provided approximately \$15 million to local reclamation districts on the five islands crossed by EBMUD's Mokelumne Aqueducts. These funds have been used to help improve the levees, including participation in the Levee Subvention Program. In addition, EBMUD invested \$40 million from ratepayer funds for seismic improvements to its largest aqueduct, to ensure supply reliability in the event of a catastrophic event in the Delta.

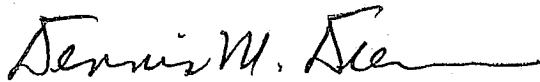
The levees that help protect EBMUD pipelines also protect other valuable infrastructure and land uses; however, EBMUD is not aware of any other non-Delta water user with interests that rely on the levees providing a comparable contribution. As the Council considers levee improvements and maintenance, it should also consider appropriate

funding mechanisms to ensure that all those who benefit from the protection are paying a share of the cost proportional to the benefit received.

EBMUD supported establishment of a benefits assessment district for the Delta as proposed in 2007 legislation authored by Senator Torlakson (SB 34), and we believe this approach is still worthy of consideration. EBMUD has repeatedly expressed support for a water user fee that is founded on the beneficiary pays principle, provided sufficient safeguards are in place to prevent redirection of funds to unrelated programs, and arbitrary fee increases.

Thank you for your consideration of these comments. If you have any questions, please call Rande Kanouse at (916) 443-6948.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis M. Diemer", with a long horizontal flourish extending to the right.

Dennis M. Diemer  
General Manager

DMD:RK:DW